

9 FAM APPENDIX K, 400 PROCEDURES

(CT:VISA-876; 04-04-2007)
(Office of Origin: CA/VO/L/R)

9 FAM *APPENDIX K*, 401 STANDARD REFERRAL FORMS

(CT:VISA-876; 04-04-2007)

Referrals must be transmitted from the responsible Embassy chief of section or U.S. Government agency head, to the chief of the consular and/or visa section or nonimmigrant visa (NIV) unit, using the forms attached to this appendix as exhibits. *Form DS-4034* (9 FAM Appendix K, Exhibit I) is designed for Class A Referrals. *Form DS-4035* (9 FAM Appendix K, Exhibit II) is designed for Class B Referrals. *Form DS-5500* (9 FAM Appendix K, Exhibit III) is for feedback to the referring officer when either the referral itself must be rejected or the applicant must be refused.

9 FAM *APPENDIX K*, 402 REFERRAL CASE ADJUDICATION

(CT:VISA-876; 04-04-2007)

Because of the importance the Department and chief of mission (CM) place on this key consular function, senior consular officers at each post should be responsible for the adjudication of visa referral cases. Class A referrals must be adjudicated by the chief of the consular section (or someone acting officially in that capacity). Class B referrals should be adjudicated by a supervisory consular officer or the chief of section (or someone acting officially in one of those capacities). Posts with large Class B referral workloads who encounter difficulties due to the absence of supervisory officers at post may contact CA/VO/F/P for assistance in determining proper adjudication arrangements.

9 FAM *APPENDIX K*, 403 TRACKING SYSTEM

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Consular sections must monitor all incoming referrals by using the NIV

software to keep track of referral statistics, trends and possible abuses. The notes in the system should reflect the name of the referring officer, the date of the referral, and any follow-up on the case Form I-275, Withdrawal of Application/Consular Notification, Form G-325, Biographic Information, results of any post-issuance validation contacts, etc.)

9 FAM *APPENDIX K*, 404 REFERRAL DOCUMENTATION

(CT:VISA-876; 04-04-2007)

Documentation for referral cases must be scanned in to the nonimmigrant visa (NIV) system, including at a minimum any application forms and the referral itself. The original visa referral form must be filed with the approved or refused visa application.

9 FAM *APPENDIX K*, 405 FEEDBACK

(CT:VISA-876; 04-04-2007)

- a. Referring and approving officers must be provided timely feedback for any case in which the referral is rejected or the referral applicant is refused. Similarly, any derogatory information on the applicant after visa issuance should be brought to the referring officer's attention.
- b. *Form DS-5500, Referral Rejection (9 FAM Appendix K Exhibit III)*, is the appropriate mechanism for providing such feedback. Per 9 FAM Appendix K section 204, the chief of the consular section, chief of mission and/or regional security officer (RSO) must counsel referring or approving officers if they are found to have abused the referral system. Other disciplinary actions may also be taken, as per Section 204.

9 FAM *APPENDIX K*, 406 SUMMARY OF STANDARD OPERATING PROCEDURES

(CT:VISA-876; 04-04-2007)

Posts should ensure that referral cases are processed according to the following guidelines:

- (1) U.S. direct hire encumbering an officer position is approached by a foreign national for assistance in obtaining a *United States* visa;
- (2) Officer decides whether a referral is merited and if so, decides whether an A category referral or B category referral is appropriate per 9 FAM Appendix K Sections 302 through *303*;

(3) For Class A visa referrals:

- (a) Referring officer fills out referral Form DS-4034, Class A Nonimmigrant Visa Referral, and obtains signature from his or her Section and/or Agency head as approving officer. (If the referral is originating with a Section and/or Agency head, *either the DCM or the CM must approve the referral.*)
- (b) The applicant's passport, Form DS-156, Nonimmigrant Visa Application, and Form DS-157, Supplemental Nonimmigrant Visa Application if required, Form DS-4035, Class B Nonimmigrant Visa Referral and any other documentation is submitted to the consular section after all appropriate fees have been paid. All items on the application forms must be completed in full prior to submitting the referral to the consular section chief.
- (c) A nonimmigrant visa (NIV) staffer enters the cases into the NIV system, using the referral function. All fields should be completed on the system, including complete name of the referring officer.
- (d) The case is brought to the Chief of the Consular Section for adjudication.
- (e) The section chief adjudicates the case, noting his decision on both the Form DS-156, and electronically. The remarks field must be used to explain any refusal or unusual circumstances.
 - (i) If the visa is approved, then the case is returned to an NIV staffer for printing and distribution and/or delivery.
 - (ii) If the visa is refused, the stamped passport is returned to an NIV staffer for distribution/delivery and feedback regarding the decision is provided to the referring officer by the consular chief.
- (f) The response in the "nature of contact" section of the referral must include the degree to which the referring officer has regular contact with the applicant. If the applicant was simply introduced to the officer by someone else, such as an Foreign Service National (FSN), for the purpose of facilitating a referral, this should be noted. The degree to which the referring officer is familiar with the applicant being referred is an important factor in the evaluation of a referral. The Office of Inspector General (OIG) has expressed the desire that officers avoid passing on referrals based solely on a recommendation for an unknown individual by an FSN.

- (4) For Class B visa referrals:
- (a) Referring officer fills out referral Form DS-4035, and obtains signature from the Section/Agency head as approving officer.
 - (b) The DS-4035 is submitted to the consular section on a timely basis and an appointment date and/or ticket is given to the applicant for a B referral interview. (The applicant should be advised that the visa interview will not be a pro forma event and the applicant should be prepared to demonstrate his or her eligibility for a visa to the consular officer.)
 - (c) The referred applicant appears at the consular section with a completed application Form DS-156, Form DS-157, and Form DS-158, Contact Information and Work History for Nonimmigrant Visa Applicant as appropriate and a machine readable visa (MRV) fee receipt. An NIV staffer enters the case into the NIV system.
 - (d) A supervisory consular officer or chief of section interviews the applicant at the appointed time.
 - (e) The case is adjudicated.
 - (i) If the visa is approved, then the case is returned to an NIV staffer for printing and distribution and/or delivery.
 - (ii) If the visa is refused, the stamped passport and any supporting documentation are returned to the applicant.
 - (f) The response in the "nature of contact" section of the referral must include the degree to which the referring officer has regular contact with the applicant. If the applicant was simply introduced to the officer by someone else, such as an Foreign Service National (FSN), for the purpose of facilitating a referral, this should be noted. The degree to which the referring officer is familiar with the applicant being referred is an important factor in the evaluation of a referral. The Office of Inspector General (OIG) has expressed the desire that officers avoid passing on referrals based solely on a recommendation for an unknown individual by an FSN.
- (5) Posts are required to scan all referral cases into the NIV system, including at a minimum the DS-156, DS-157 and DS-158 (if applicable) and the referral form to ensure that all documentation related to referrals is available in the Consular Consolidated Database (CCD). Instructions on how to scan a document are contained in Chapter 19 of the NIV Manual as well as in the NIV online training modules.
- (6) All referrals must be recorded in the NIV system using the referral

- function. In addition, a supervisory consular officer must establish a program for the periodic review of referral activities, noting frequency of referral by officer and section and using post fraud management resources to examine return rates.
- (7) Individual missions should establish a procedure to be followed to communicate a Class B referral to the applicant. The referral form itself cannot be used for this purpose. It is an internal communication between another section of the embassy and the consular section and therefore the referring officer **MUST NOT** give the referral form to the applicant. Procedural options for the exchange of referral and appointment information might include:
- (a) Issuing letters to Class B referral applicants with their appointment date and time to facilitate entry into the consular waiting room;
 - (b) Giving the guards a list of Class B referrals each day, eliminating the need for a special appointment letter; and
 - (c) Referring officers who submit a Class B referral to the consular section may ask – in person or via e-mail – for a letter with an appointment time, which they can then provide to the Class B applicant. Once the new B referral form noted in the summary is available, another option would be for applicants to bring their part of the form to the consular section or application intake service and request an expedited appointment.